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JAMES H. McKENNEY,
Clerk.

Filed April 7, 1902.

IN THE

Supreme Court of the United States

MARC HUBBERT, - - - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - - *Defendant.*

PETITION FOR CERTIORARI.

W. O. HARRIS,
For Petitioner.

JOHN P. MORTON & CO., PRINTERS, LOUISVILLE.

NO. 994.

United States Circuit Court of Appeals,

SIXTH CIRCUIT.

JANUARY TERM, 1902.

CAMPBELLSVILLE LUMBER CO., - *Plaintiff in Error,*

VERSUS

MARC HUBBERT, - - - - - *Defendant in Error.*

} Notice.

Plaintiff in error is hereby notified that defendant in error will, on Monday, the 7th day of April, 1902, upon its verified petition and a copy of the entire record in this cause, file a petition in the Supreme Court of the United States and move the said Court for a writ of certiorari or other process, addressed to the Circuit Court of Appeals for the Sixth Circuit, and commanding it to certify to the Supreme Court for its review and determination the records in this case.

Copies of the petition, motion, and brief in support thereof are herewith delivered to you.

W. O. HARRIS,
Counsel.

Service of the foregoing notice and copies are acknowledged this 19th day of March, 1902.

ERNEST MACPHERSON,
Counsel for Campbellsville Lumber Company.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1901.

MARC HUBBERT, - - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - *Defendant.*

} Motion.

Comes Marc Hubbert, by W. O. Harris, his counsel, and moves this Honorable Court that it shall by certiorari, or other proper process directed to the Honorable the Judges of the Circuit Court of Appeals for the Sixth Circuit, require said Court to certify to this Court for its review and determination a certain cause in said Court of Appeals, lately pending, wherein defendant, the Campbellsville Lumber Company, was plaintiff in error and your petitioner, Marc Hubbert, was defendant in error, and to that end it now tenders herewith its petition and brief, with a certified copy of the entire record in said cause in said Circuit Court of Appeals.

W. O. HARRIS,
Counsel.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1902.

MARC HUBBERT, - - - - - - - - - *Petitioner*,

VERSUS

CAMPBELLSVILLE LUMBER CO., - - - *Defendant.*

} Petition.

Petition for the writ of certiorari requiring the United States Circuit Court of Appeals for the Sixth Circuit to certify to the Supreme Court of the United States, for its revision and determination, the writ of error taken by the Campbellsville Lumber Company against Marc Hubbert.

To the Honorable the Chief Justice and the Judges of the Supreme Court of the United States:

Your petitioner, Marc Hubbert, respectfully represents as follows:

I.

By an Act of the Legislature of Kentucky, approved March 18, 1878, and printed in an appendix to the brief in support of this petition, the County of Taylor was authorized to issue bonds to the amount of $125,000, to be sold at par and the proceeds used to compromise a previous bonded debt at rates not exceeding fifty cents on the dollar.

By an Act approved February 27, 1882, the amount of bonds authorized was increased to $150,000. See appendix.

II.

Marc Hubbert, a holder of coupons cut from these bonds, obtained judgment by *default against the* County in the Circuit Court of the United States for the District of Kentucky for $2,963.13 (Rec., p. 14), on which judgment execution issued and was returned " no property found." (Rec. 104.)

III.

By Sections 2 to 8 of the Amended Act it is provided in substance that if judgment shall be rendered on any bond or coupon issued thereunder, and the court rendering the judgment shall be of opinion that " such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it," it may refer the case to a commissioner to ascertain the amount necessary to be paid by each taxpayer in order to discharge the judgment, and, after advertising the filing of the report and affording all parties an opportunity to be heard, may render judgment against the taxpayers for the amount found due by each.

After the return of " no property found " on his execution, Hubbert filed an affidavit setting out the fact that the opposition in the County to the payment of the bonds was so great that for several years no sheriff had qualified and no money collected on levies made (Rec. 104), and on the filing of this affidavit a commissioner was appointed and a report made assessing upon the taxpayers the amount necessary to pay off the judgment. (Rec. 14, etc.)

The advertisement of the report and other steps required by the Amended Act were strictly pursued. Exceptions were filed by the County, but no taxpayer appeared or filed any exception, and judgment was rendered against each taxpayer for the amount found due by the report. (Rec. 24.)

IV.

Among the judgments rendered was one for $123.76 against the Campbellsville Lumber Company, upon which execution of *fieri facias* was issued. The Lumber Company thereupon appeared and moved the court, on affidavit filed, to set aside the judgment and quash the execution. (Rec. 98.)

The grounds of the motion are stated in the affidavit.

The principal ground, and the one upon which the case turned in the Circuit Court of Appeals, was that the bonds did not contain a stipulation to the effect that the holder should be entitled to the benefit of the provisions of the Act under which they were issued. (Rec. 100.)

The statute provision relied on in the affidavit is as follows:

> "SEC. 10. The bonds to be issued under the Act to which this is an Amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection of the same herein or in the Act to which this is an Amendment provided for."

The bonds did not contain this stipulation, but did contain the following recital:

> "This bond is one of an issue amounting in all to $125,000, authorized by an Act of the General Assembly of the Commonwealth of Kentucky, approved March 18, 1878." (Rec. 102.)

The motion to set aside the judgment was overruled and a writ of error taken to the Circuit Court of Appeals, where the judgment was reversed. (Rec. 116.)

The ground of the reversal was that the judgment against the taxpayer was void, because the bonds from which were cut the coupons upon which the judgment against the County was based did not contain the stipulation required by Section 10 of the Amended Act above quoted.

WHEREFORE your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding the said court to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record and all proceedings of the said Court in said case therein, entitled Campbellsville Lumber Company v. Marc Hubbert, to the end that said case may be reviewed and determined by the Court as provided in Section *b* of the Act of Congress entitled "An Act to Establish Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States and for Other Purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in confirmity with said Act, and that the said judgment of the said Circuit Court of Appeals in the said case and every part thereof may be reversed by this Honorable Court.

MARC HUBBERT,
By W. O. HARRIS,
Counsel.

COMMONWEALTH OF KENTUCKY,
COUNTY OF JEFFERSON. } ss.

W. O. Harris, being duly sworn, says he is counsel for Marc Hubbert, the petitioner, that he prepared the foregoing petition, and that the allegations therein are true, as he verily believes.

W. O. HARRIS.

Subscribed and sworn to by W. O. Harris before me, this March 14th, 1902.

My commission expires February 10th, 1906.

ARTHUR PETER,
Notary Public, Jefferson Co., Ky.

IN THE

SUPREME COURT OF THE UNITED STATES.

MARC HUBBERT, - - - - - - - - *Petitioner,*

VERSUS

CAMPBELLSVILLE LUMBER CO., - - *Defendant.*

Brief in Support of Petition.

The judgment of the Circuit Court of Appeals affects directly only one taxpayer, whose debt is only $123.76, but it will compel the Circuit Court to set aside the judgment against all other taxpayers and will deprive all the bondholders of the remedy given by the Act under which the bonds were issued. Its practical effect will be to enable the County to continue to repudiate its entire bonded debt of $150,000.

There is no disputed question of fact, and the legal question is purely one of construction of the statute.

Nor does this question involve the *validity* of the bonds or coupons. That question was settled by the judgment against Taylor County, which has not been appealed from.

The only question is as to whether the plaintiff in that judgment, having followed strictly the procedure pointed out, is entitled to the remedy conferred by the statute. The remedy was originally one of grace conferred by the sovereign, but became a contract with the bondholders as soon as the bonds were sold. It only remains to inquire to whom the statute gave the remedy.

The conditions upon which the court may assess a tax upon the citizens of the County are plainly set out in Sections 2 and 3 of the Amended Act.

Section 2 provides that any judgment on any bond or coupon shall be a lien on all taxables in the County.

Section 3 provides as follows:

> "If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall on motion of the plaintiff therein refer the same to a commissioner," &c.

Here, then, we have two conditions, and only two; one is a valid judgment and the other is allegation and proof of obstruction to its enforcement. Both of these propositions are undisputed. The original judgment was obtained by default on due service of process, and there has been no appeal from it.

The proof of obstruction was the marshal's return and the affidavit of the plaintiff, found at page 104 of the Transcript. Its sufficiency as proof has never been questioned, and even if insufficient it would not affect collaterally the validity of the judgment upon it.

The opinion of the Circuit Court of Appeals expressly admits both these propositions, and yet the Court reaches the conclusion that the trial court should have gone behind the first judgment and the evidence of obstruction required by the statute and should have required allegation and proof that the coupons upon which that judgment was based were cut from bonds containing the stipulation directed, or required, if you will, by Section 10.

The effect of this is to read into Section 2 a requirement which is not found there, and to hold the judgment void because it did not follow that judicially imported requirement. The statute says that *any judgment* rendered on bonds or coupons may be enforced as therein directed; the Circuit Court of Appeals says "any judgment rendered on coupons cut from a bond containing the stipulation required by Section 10."

Such liberties may have been taken by courts with statutes, but it should require great stress of weather to drive a court into such a port.

The stress of weather in this case is plainly stated by the court.

The opinion states that the Act is "one of the most stringent and extraordinary acts which has come under our observation," that "its operation must be attended with unusual harshness and extraordinary expense," that its provisions are "novel and summary" and "novel and drastic," and the conclusion is reached that "such an Act should be strictly construed, and a case clearly made out before any relief should be extended thereunder."

It might be suggested that the proper time for the inhabitants of Taylor County to discover the enormities of this statute was when they got the legislature to pass it and sold the bonds issued under it, but, passing that, let us see whether it deserves the animadversions so liberally bestowed upon it by the court.

Commencing with the assessment, we find it provided in Section 3 of the Act that it is to be based on the State assessment for taxes, but is to be made by a commissioner appointed by the court instead of the regular State assessor. That may be unusual, but can hardly be justly called harsh or oppressive. When the assessment is made it is to be returned into court, its filing is to be advertised for three weeks, and afterward thirty days' time is to be given for exceptions. (Sec. 5.)

The opinion says that this is due process of law, and does not anywhere intimate that there is any harshness or oppression in it.

Coming now to the enforcement, we find that directed to be done by judgment, and at the expiration of ninety days by execution. (Sec. 7.)

Surely that is less harsh to the taxpayer than the usual method of collecting taxes.

The opinion also states that the Act is

> "A wide departure from ordinary methods for enforcing the payment of a judgment against a municipality already armed

with full power to assess and collect a tax to meet its obligations."

This is true, but we will be pardoned for suggesting the fact that the first set of bondholders did not find this armament sufficient to enable them to collect their bonds, and that some "wide departure" was necessary to induce others to subscribe for bonds at par.

Stress is also laid in the opinion on the fact that the operation of the statute

> "must be attended with unusual harshness and extraordinary expense, growing out of the fact that separate judgments are provided for against taxpayers, upon which separate executions must—90."

It is true that a suit is more expensive than a levy and sale, but the court overlooks the fact, which appears from Hubbert's affidavit, that a levy has already been made to pay the coupons of 1896 and 1897 (Rec. 105), and that certain citizens have paid their proportions of the debt. (See Report, p. 106.) This shows that each taxpayer has had an opportunity to avoid the expense of a suit by paying his taxes, and should diminish the sympathy which the court seems to have extended to him.

We may also properly suggest, that where the taxpayer refuses to pay his taxes and where no one can be found to act as Sheriff and make him pay them, a law which subjects him to the costs of a suit can hardly be condemned on the ground of its "extraordinary expense."

It may also occur to Your Honors that in a case where the ordinary remedies had proven ineffectual to coerce payment of a former issue of bonds, and where it was desired to give new bondholders a new remedy, the one which was given in this case was about as inexpensive as any which could be devised.

The Federal Reports furnish several precedents for such statutes.

In Supervisors v. Rogers, 7 Wallace, 175, a State statute empowered its courts to appoint an officer to perform any duty

required to be performed under a mandamus. A Federal court sitting in that State appointed its Marshal to levy and collect a tax, and its action was affirmed by this Court. That case was again approved by this Court in

Thompson v. Allen County, 115 U. S. 559.

In Stansell v. Levee Board, 13 Fed. Rep. 846, bonds had been issued under a Mississippi statute authorizing the State courts, in the event of non-payment, to appoint commissioners to levy and collect a tax. The Federal court was applied to, and afforded the relief.

In none of these cases was there any suggestion from court or counsel that there was anything harsh or oppressive in taking the power to levy and collect taxes from those who would not or could not perform their duty and conferring it upon those who would.

There is a long line of cases, which are reviewed in Thompson v. Allen County, holding that the taxing power is sovereign and must be exercised by those to whom the State has committed it, but the opinion in this case is the first to intimate that courts should hesitate to exercise such powers when so conferred.

The opinion of the Circuit Court of Appeals is also novel in holding that the recital called for in Section 10 is mandatory, and yet that bonds not having that recital are valid obligations. The court says:

> "We are not to be understood as casting doubt upon the validity of the bonds as evidence of a valid county indebtedness. No such question is here involved."

The court's conclusion is that while all the bonds are valid only those bonds containing the stipulation can be enforced as required by Sections 2 and 3 of the Act. The statute does not say this. It says that *all judgments* on bonds may be so enforced. If, then, judgment may be had on any bond, and any judgment may be enforced by court proceedings, there is nothing left upon which to rest the court's opinion except to interpolate into the

statute something which is not there, namely, that no judgment shall be thus enforced unless it contains the required stipulation.

The court below rests its opinion upon the proposition that Section 10 of the Act is mandatory. If so, it made the bonds void and the judgment against the County erroneous, but we submit that if that judgment be conclusive in this proceeding then the right to enforce it under the Act must exist.

But, waiving this, let us inquire whether this provision of the Act is mandatory. The principles governing such questions are well settled in this Court.

In the case of French v. Edwards, 13 Wallace, 506, a tax case, the Court said:

> "When the requisitions prescribed are intended for the protection of the citizen and to prevent a sacrifice of his proty, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory."

This language was quoted with approval in Lyon v. Alley, 130 U. S. 185, and in Erhardt v. Schroeder, 155 U. S. 129. Your Honors said:

> "Very rarely, if ever, is there power in the judiciary to enter into all the questions affecting the legality of a charge for taxes, and therefore, in general, a statute, even though not in express terms mandatory, is treated as being so if its literal observance might afford substantial protection to the party complaining, and a failure of such observance by an officer is considered to render his act void."

Tried by these tests, we submit that Section 10 is plainly a provision intended to make the bonds attractive to purchasers, and is directory and not mandatory. Can it be that the taxpayers' rights would be "injuriously affected" or would fail of "substantial protection" if the stipulation were omitted? The opinion below answers this affirmatively upon a ground which seems to us much more ingenious than sound. It says:

"The purpose doubtless was to compel the authorities issuing them to recognize the fact that by such stipulation they were consenting to the special and stringent remedies of the Act."

The court's idea seems to have been that this stipulation was intended as a solemn warning to the County Judge and Clerk, and that by reason of its absence the substantial rights of the tax-payers were prejudiced. If such had been its purpose, the Act would have required one of the bonds to be framed and hung up in the Clerk's office.

Your Honors have never yet taken such a fanciful view of a statute, nor denied your aid to a creditor enforcing an honest debt, upon grounds so slender.

We respectfully submit that the case is one which ought to be reviewed.

W. O. HARRIS,
For Petitioner.

APPENDIX.

CHAPTER 483.

AN ACT FOR THE BENEFIT OF TAYLOR COUNTY, EMPOWERING IT TO COMPROMISE ITS DEBTS, ISSUE BONDS, AND LEVY AND COLLECT TAXES TO PAY THE SAME.

BE IT ENACTED, By the General Assembly of the Commonwealth of Kentucky:

Section 1. That the county of Taylor be, and it is hereby authorized and empowered to make and enter into any contract or contracts, with any person or persons, corporation or association of persons, for the compromise, purchase, or redemption of any and all bonds, coupons, judgments, or other indebtedness of said county, whether the same be due or not due, growing out of the issue of any bonds or coupons heretofore issued by said county; and said county, acting through its county court, and such agents as may be appointed by the county court of Taylor county, are hereby authorized and empowered to execute and carry out such contracts, and for that purpose it is hereby authorized to issue, negotiate, and deliver new bonds of said county, not exceeding one hundred and twenty-five thousand dollars, in such amounts as it may deem best, and on such time as the county may think proper, and bearing any rate of interest not exceeding eight per cent. per annum, with coupons attached to represent the interest, payable semi-annually at such time and place as it may think best. The bonds to be signed by the county judge and county court clerk, with the seal of said county attached, and the coupons on said bonds to be signed by the clerk alone. And it shall have the right to sell all or any number of said bonds at not less than their par value, the proceeds of which may be used to buy the present outstanding bonds of Taylor county, at rates not to exceed fifty cents on the dollar, or to exchange the same with the holders of bonds of Taylor county now outstanding, upon such terms as may be agreed to by the holders and the said county court of Taylor county and its agents, upon the surrender and cancellation of the old bonds: *Provided*, that in such exchange no greater rate shall be allowed in exchange than fifty cents on the dollar for said old bonds. And the county clerk of said county shall keep a record of all bonds issued under this act, showing the date of such bond, when payable, the amount thereof, and the number of coupons attached to

each bond; which record shall also show the number and amount of bonds sold, and the number and amount exchanged for other bonds of said county. The records shall also show the number, amount of bonds, and coupons taken up and canceled by sale or exchange of the new bonds, and said record shall be open at all times to the inspection of the taxpayers of said county.

Sec. 2. That the faith and credit of the county of Taylor be, and the same is hereby, pledged to carry out, in good faith, any and all contracts made by it for the issue, purchase, compromise, and redemption of any and all bonds and coupons issued under the first section of this act; and any and all bonds and coupons issued and delivered under this act shall be valid and binding on the parties thereto; and any *bona fide* holder or owner of any such bond or coupon, issued and delivered as aforesaid, on obtaining a judgment, in any court of competent jurisdiction, against the said county, shall, if the county refuses, for thirty days after demand, to levy and proceed in good faith to have collected a tax sufficient to pay any such judgment, interest, and costs, be entitled, on application to the circuit court, or, in vacation, to the circuit judge of the seventh judicial district, after having notice thereof served on the judge of said county, to have an order made, based on the last preceding assessment, levying a tax and appointing a collector, whose duty it shall be to collect from the taxpayers of Taylor county sufficient to pay off such judgment, interest, and cost, and the cost of collecting the same; and the collector so appointed shall have all the power given by law to the collectors of State revenue and county levies, and be liable in like manner; *Provided, also,* That any collector appointed under this section shall, before he proceeds to act, execute a bond, with good solvent surety, to be approved and attested by the judge of said district, the same to be by him delivered to the Taylor county court clerk for safe keeping; and should the county court, held by the county judge and justices, or by the county judge, fail, for ten days after demand in writing, to levy and proceed in good faith to collect a tax as provided in this act, then, and in that event, it is hereby made the duty of the circuit court, or judge thereof in vacation, being informed of such failure by any *bona fide* bondholder or his attorney, to levy and have collected, as in case of a judgment, a tax to pay off semi-annual interest on past due coupons of bonds issued under this act, of which application the county court or judge thereof shall have ten days' written notice.

Sec. 3. That if at any time all the justices of the peace of Taylor county shall resign, or if at any time the number of justices, from death, resignation, or other cause, be reduced to a less number than a majority of all the justices to which, by law, said county is entitled, then, and in that event, the county judge of said county, sitting as a court, shall have and exercise all the powers of the county court of Taylor county, within the meaning and purview of this act, and possess and exercise all the powers conferred upon the Taylor county court by this act.

Sec. 4. That it shall be the duty of all collectors appointed under the provisions of this act to make monthly reports, under oath, to the county treasurer of Taylor county of all moneys collected by him or them; and such collectors shall at once pay over to the county treasurer the amount of all moneys collected by him, less the commissions allowed by law or order of the court or judge making the levy. And it is hereby made the duty of the treasurer of Taylor county to deposit all moneys collected under the provisions of this Act, so soon as he receives the same, in some solvent bank, with a paid-up capital of not less than $100,000, to the credit of Taylor county, which money shall be paid out by such bank only upon the check of the treasurer of Taylor county. And no such collector or treasurer shall have the right to use or loan said money, or any part thereof, for any purpose whatever, save and except as provided in this Act.

Sec. 5. All such collectors shall collect the entire tax in his hands, and pay the same over to the county treasurer within six months from the time the tax-books are placed in his hands for collection. And it is hereby made the duty of the sheriff of Taylor county to collect all tax levied by the county court under this act; and should he fail for ten days, after the levy of any such tax and notice to him, to execute bond, with good and sufficient surety, to be approved by the county court, then it shall be the duty of said county court to declare, by order of record, his office of tax collector forfeited. And in that case it is made the duty of the said county court to appoint a tax collector, and take bond from him, with good and approved surety, and fix, by order, the compensation of such collector. And if any sheriff or tax collector shall fail to collect or pay over the taxes, as provided in this act, to the county treasurer, such sheriff or collector so in default shall, with his sureties in his official bond, be liable to an action, on motion on ten days' notice in the Taylor circuit or common pleas courts, in which action the county of Taylor, in its own name, shall recover for any default of

the sheriff or collector the amount due the county, with interest from the time it should have been paid, the costs of the action or motion, and ten per cent damages on the amount found due and recoverable. And should the treasurer of Taylor county fail to pay over any money in his hands when ordered to do so by the Taylor county court, he and his sureties shall be liable in like manner as is herein provided in regard to sheriffs and tax collectors; and the Taylor county court, held by the county judge, shall have the right to require all sheriffs, tax collectors, and the treasurer of Taylor county to renew or give additional surety upon the official bonds of such officers, as often as he may think proper, so as at all times to have securities on said bonds good and solvent for any amount of money in their respective hands.

Sec. 6. That it shall be the duty of Taylor county to have an assessment, make a levy, appoint a collector, and have collected from the taxpayers of Taylor county, upon all property which is now or that may hereafter be assessed for, and subject to, State revenue purposes, including the amount given in order to equalize law, to pay the semi-annual interest or past due coupons on all bonds issued under the provisions of this act, and also to pay off and take up the said bonds at maturity; and if the county court shall deem it proper, it may, in addition to the tax herein provided for, levy an additional tax upon the taxable property of said county to create a sinking fund to purchase any or all bonds and coupons issued under the provisions of this act.

Sec. 7. That the county court of Taylor county shall cancel all bonds and coupons purchased under the provisions of this act by writing on the face thereof, with red ink, the following: "This bond has been bought in by Taylor county, and is not to be reissued"; and the county clerk, in the presence of the county judge, after having made a record of the bonds and coupons purchased under this act, shall burn the same.

Sec. 8. *Be it further enacted*, And as an inducement to the taxpayers of Taylor county to furnish the money with which to at once purchase the outstanding bonds and debts of said county, it is hereby made lawful for the taxpayers, or any of them, of Taylor county, to pay to the county treasurer his or their taxes due, or to become due, to said county, taking his receipt therefor; and all payments so made are declared a valid payment of such a one's share of the taxes due, or to become due, on account of the present indebtedness of said county, to the extent he or they may thus pay; and if the amount of

the payment or payments thus made shall be equal to or exceed the whole amount of taxes due, and to become due, by such taxpayer, to take up the bonded debt of said county, then the taxpayer so paying shall be relieved from any further taxes under this act; and should any taxpayer pay, under this section, more than his proper quota of said indebtedness, then it shall be the duty of the county to refund to him the over-plus so soon as ascertained, or as may be agreed upon; and the treasurer of Taylor county shall keep a record-book, in which he shall open an account with the parties making advancements under this section, which book shall be carefully indexed, and show the full names of the payers, the amounts paid, and the date of payment; and the book shall be subject at all times to inspection by the parties making advances, and the Taylor county court and sheriff or collector; and the money or moneys thus collected shall be deposited by the treasurer in like manner as that taken in through the collectors, and be subject to the same restrictions in every respect; and the county court shall make the treasurer a proper allowance for his trouble under this act, to be paid out of the amount collected.

Sec. 9. That if any sheriff, collector, or the county treasurer, or other county officer having charge or control thereof, shall use, loan, or in any way misapply any money or moneys collected or raised under this act, except the commissions, to which, by law, they may be entitled, or shall be a party to any such misapplication, of said fund, or any part thereof, or aid or assist any one so offending, shall be guilty of felony, and, upon indictment and conviction, shall be confined to the penitentiary of this Commonwealth for a period of not less than two nor over ten years.

Sec. 10. This act shall be in force and take effect from and after its passage.

Approved March 18, 1878.

CHAPTER 306.

AN ACT TO AMEND AN ACT ENTITLED, "AN ACT FOR THE BENEFIT OF TAYLOR COUNTY, EMPOWERING IT TO COMPROMISE ITS DEBTS, ISSUE BONDS, AND LEVY AND COLLECT TAXES TO PAY THE SAME." APPROVED MARCH 18, 1878.

BE IT ENACTED by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the words "twenty-five," preceding the word "thousand," in the first section of this act, be, and the same is hereby, stricken out, and the word "fifty" inserted in lieu thereof.

Sec. 2. That in the event judgment shall be rendered on any bond or bonds which may be issued by the county of Taylor under the provisions of the act to which this is an amendment, or on any coupons of any such bond or bonds, such judgments shall constitute a lien upon all real and personal property in said county, subject to taxation under the revenue laws of this Commonwealth.

Sec. 3. If the court rendering such judgment shall be of opinion that such serious obstruction is likely to be offered to the enforcement of any such judgment as will materially delay it, it shall, on motion of the plaintiff therein, refer the same to a commissioner, with instructions to ascertain and report, on a day to be by it named, the amount which it will be necessary for the holders or owners of any such property to pay in order to raise promptly, in proportion to the value of such property owned by each, a sum sufficient to pay the said judgment, and all costs of the said suit, and the costs of collecting the same, making due allowance for probable delinquencies. Upon making any such reference, the said court shall make an order, and, if need be, enforce it by process of contempt, directing the officers having charge of the books containing the last assessment for the purpose of State taxation, to deliver them to the said commissioner, to be by him used in making out his report.

Sec. 4. If, for any reason, such assessment books shall not be promptly forthcoming, the court shall provide for a new assessment under the direction and supervision of the said commissioner.

Sec. 5. Upon the completion of said report, the said commissioner shall file the same in the clerk's office of said court, and publish in a newspaper published in Taylor or Marion county, once each week for three weeks, a notice of the filing of said report, and stating that the same will be subject to exceptions, to be filed in said clerk's office until a day to be mentioned in said notice, which day shall not be less than thirty nor more than forty days from the last day on which the said notice is to be published.

Sec. 6. On a day to be named by the court in the order referring the said judgment to the commissioner, or on the first day of the next regular or special term of the said court after the expiration of the time for filing exceptions, the said exceptions shall stand for hearing; but the hearing thereof may be continued from time to time, for good cause shown, or to suit the convenience of the court.

Sec. 7. When, after such correction as the court may deem proper, the said report shall be approved and confirmed, judgment shall be rendered against the parties named in the report for the

amounts therein named, and at the expiration of ninety days from the date of said judgment several executions shall issue against all persons who have not then paid to the sheriff, or other officer who collects executions from said court, for the sums adjudged to be due by them respectively, which may be levied on any property subject to the State revenue tax held by the defendants, respectively, or which was owned by them at the date of the judgment.

Sec. 8. The court shall make proper orders for the safe keeping and disposition of the money to be collected under the provisions of this act; and if the amount collected shall be more than necessary to pay the judgment and costs, the residue shall be paid over to the commissioner of the sinking fund of said county, to be used for the payment of the principal and interest of bonds issued under the act to which this is an amendment.

Sec. 9. The sheriff or other officer who may collect such sums as shall be voluntarily paid to him under any such judgment shall be entitled to the same compensation which sheriffs receive for collecting taxes due to this Commonwealth.

Sec. 10. The bonds to be issued under the act to which this is an amendment shall, on their face, stipulate that the holders of any of them, or any coupon thereof, shall be entitled to the remedies for the collection of the same herein, and in the act to which this is an amendment, provided for.

Sec. 11. This act to take effect from its passage.

Approved February 27, 1882.